

Bank of America



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BY ELECTRONIC MAIL

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Washington, DC 20219
Attn: Docket No. 05-01
Regs.comments@occ.treas.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attn: Docket No. OP-1220
Regs.comments@federalreserve.gov

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attn: EGRPRA Burden Reduction Comment
comments@fdic.gov

Regulation Comments, Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attn: No. 20005-02
Regs.comments@ots.treas.gov

Re: Request for Burden Reduction Recommendations; Money Laundering, Safety and
Soundness, and Securities Rules; Economic Growth & Regulatory Paperwork Reduction
Act of 1996 ("EGRPRA")

Dear Madams and Sirs:

Bank of America Corporation (“Bank of America”) appreciates the opportunity to comment to the Office of the Comptroller of the Currency (the “OCC”), the Board of Governors of the Federal Reserve System (the “Board”), the Federal Deposit Insurance Corporation (the “FDIC”), and the Office of Thrift Supervision (collectively, the “Agencies”) in connection with the Agencies’ fourth request for public comments pursuant to EGRPRA. Bank of America, with over \$1 trillion in total assets, operates the largest banking network in the United States, with full-service consumer and commercial operations in 29 states and the District of Columbia. Bank of America provides financial products and services to over 33 million households representing one out of three households within its franchise as well as two million businesses, and provides international corporate financial services for clients around the world.

Under the EGRPRA mandate, the Agencies have solicited public comment on their regulations encompassing three categories: Money Laundering, Safety and Soundness and Securities Rules. In particular, the Agencies have requested public comment on which of their regulations contain “outdated, unnecessary, or unduly burdensome regulatory requirements.” Bank of America supports the EGRPRA process and the Agencies’ efforts to reduce regulatory burden wherever possible. Bank of America has identified a number of opportunities for regulatory simplification.

A. Anti-Money Laundering

Bank of America, like most financial institutions, has serious concerns about the complexity of anti-money laundering laws and regulations, the clarity of regulatory guidance and the enforcement posture of the banking agencies and law enforcement with respect thereto. We wish to draw to your attention the letter dated April 1, 2005 that was sent to Mr. William J. Fox and Mr. William Langford of the Financial Crimes Enforcement Network (“FinCEN”) from Norman R. Nelson of The Clearing House Association. That letter summarized a variety of concerns relating to anti-money laundering that we believe the agencies should take into consideration as part of the EGRPRA process. Rather than restate each of those concerns here, we incorporate that letter by reference. We would also like to discuss a number of other more specific comments relating to anti-money laundering laws and regulations.

I. *Suspicious Activity Reports (“SARs”)*

The primary regulation outlining the requirements for filing SARs is 31 C.F.R. §103.18 (each agency has separate regulations restating these requirements for their specific regulated institutions (e.g., 12 C.F.R. §21.11 for national banks) and similar regulations apply to broker dealers and other financial institutions). We have one suggestion relating to this regulation that would ease the burden on banks in filing a SAR and also to improve the quality of SARs that may be useful for the federal government.

We suggest greater clarification of the circumstances or activities that warrant filing a SAR, and more importantly, those that do not. The uncertainty of the current rules have led many financial institutions to file on transactions or circumstances that are likely of little value to law enforcement. Our understanding is that the overall volume of SARs filed with FinCEN has been rising, but that the concentration of high value SARs is being diluted. The regulations and related

guidance should be designed to focus the limited resources of the federal government on topics and transactions that are most beneficial for investigations.

One change that may be beneficial to eliminate low value SARs would be to raise the dollar thresholds for transactions that mandate a SAR filing. The current base threshold of \$5,000 likely results in many SARs on transactions that do not warrant expending limited government resources to investigate. We suggest that \$25,000 would be a more reasonable threshold. Institutions should still be encouraged to file voluntary SARs (even if below that threshold).

2. Currency Transaction Reporting

31 C.F.R. §103.22 obligates financial institutions to file currency transaction reports (“CTRs”) for large cash transactions in excess of \$10,000. For certain customers that routinely deal in large currency, a financial institution may file for an exemption from the CTR requirements. There are two potential changes to this regulation that would reduce the regulatory burden on financial institutions.

First, the agencies should consider raising the dollar threshold above \$10,000 to \$25,000. As with the SAR threshold, we believe that it is likely that the current threshold is triggering a high volume of filings to the federal government and is overburdening limited resources of law enforcement. A higher threshold would reduce overall filings and improve the value of those that are filed.

A second suggestion is to streamline and improve the process by which a financial institution obtains an exemption for its customers from the CTR requirements. In particular, the current rules require that each financial institution must initially designate an entity as exempt within 30 days of the first transaction that would have triggered a report (31 C.F.R. §103.22(d)(3)). Each year, the exemption and the appropriateness of such exemption must be reviewed by the financial institution (31 C.F.R. §103.22(d)(4)). Finally, every other year the financial institution must re-file to renew its exemption for certain customers exempt under 31 C.F.R. §103.22(d)(2)(vi) and (vii) (31 C.F.R. §103.22(d)(5)). Filing, maintaining and re-filing exemptions is very time consuming for a financial institution. The agencies should consider automatically exempting certain categories of clients without the need to file an exemption designation form with the federal government. This should apply for any customers exempted under 31 C.F.R. §103.22(d)(2)(i) through (v). In the case of other exempt entities, a designation of exempt person should be evergreen, thereby eliminating the biennial filing requirement. Financial institutions should continue to be required to internally monitor their customer’s transactions and the appropriateness of exemptions; however, a filing should only be required in order to withdraw an exemption designation if warranted under the circumstances.

3. Monetary Instrument Sales Recordkeeping

31 C.F.R. §103.29 requires that financial institutions maintain records relating to cash sales of monetary instruments of between \$3,000 and \$10,000 inclusive. As with SARs and CTRs, we recommend raising the dollar thresholds correspondingly to reduce burden for smaller transactions and focus efforts on transactions more valuable to law enforcement. To be consistent with our other new proposed thresholds, we recommend increasing the thresholds to \$10,000 to \$25,000.

4. Customer Identification Program

Section 326 of the USA PATRIOT Act required financial institutions to implement a customer identification program (“CIP”) for all customers that open accounts. Regulations implementing these requirements are found at 31 C.F.R. §103.121. CIP has been and continues to be one of the most labor intensive, costly and burdensome requirements to implement. We nevertheless generally agree with the importance of this requirement. We have two specific suggestions.

First, the reliance safe harbor of 31 C.F.R. §103.121(b)(6) currently provides that reliance upon the CIP of another regulated financial institution must be reasonable and documented in a written agreement that is renewed annually. The annual renewal requirement is burdensome and does not add value to the CIP process; therefore it should be eliminated. CIP is focused on the account opening process. CIP requires that a financial institution obtain information and perform verification on a customer prior to or immediately following account opening. CIP does not require periodic renewals of customer information or verification when performed directly. The annual renewal requirement imposes an ongoing burden on the financial institution and its counterparty that goes beyond CIP. A reliance certificate obtained at the time of account opening is meaningful and consistent with CIP. Obtaining renewal certificates annually unnecessarily wastes time and resources. Furthermore, it is often difficult to obtain renewal certificates from counterparties if there is no ongoing transaction that motivates the counterparty to cooperate after the initial account opening. The penalty for failure to obtain an annual certification is too severe. It eliminates the safe harbor and arguably could be read to require the financial institution to then perform CIP on the customer after the fact (even though it may be one or more years following account opening).

Second, the reliance safe harbor should explicitly authorize reliance upon an affiliated financial institution without regard to documenting a formal reliance certificate. Large financial institutions with many different subsidiaries should be encouraged to coordinate on know your customer due diligence (both to improve the quality of enterprise-wide due diligence and to reduce duplicative burden on customers). Under the present rule, technically a financial holding company must document reliance upon affiliates in the same manner as third parties. This adds no substantive benefit and formalistically requires unnecessary documentation.

5. Shell Bank Certifications

Sections 313 and 319 of the USA PATRIOT Act prohibit U.S. financial institutions from maintaining correspondent accounts with non-U.S. shell banks and require certain information collection from all non-U.S. bank customers. This requirement is implemented in the regulations at 31 C.F.R. §103.177. The regulation provides for a safe harbor if the financial institution obtains a certification on a form prescribed in the regulation and obtains a re-certification from the

correspondent bank customer at least every three years. We recommend eliminating the recertification requirement or in the alternative extending the period between re-certifications beyond three years (for example to at least five years).

Particularly for large, internationally active U.S. financial institutions, the shell bank certification process is very time consuming and burdensome. Bank of America has thousands of relationships that are covered by these rules. The process of obtaining re-certifications from existing customers is equally burdensome (in the case of Bank of America involving a year-long project in advance of the three year expiration date). This process imposes an unnecessary burden on financial institutions and their customers. In some cases, because the definition of correspondent account is so broad, such re-certifications may be required for original transactions that are still outstanding, but for which no new activity exists. This raises the recurring problem of how to get customers to sign the re-certifications and what can or should the financial institution do if they are unable to get one (even in cases where a certification was originally on file). Additionally, having just gone through a re-certification process, we have found that it is not common that information on the original certification would have materially changed during the three-year period, such that real value is added from the re-certification process.

One other suggestion would be to clarify the term “correspondent account”. As currently drafted, the term is extremely broad and covers virtually every relationship that is or is expected to be ongoing. As drafted, this term goes well beyond what the banking industry generally considers to be a correspondent account, which typically focuses on accounts through which deposits, wires and similar transactions occur between banks. The uncertainty around what types of one-off transactions will be considered correspondent accounts, or at what point multiple one-off transactions rise to the level of a correspondent account, creates serious concerns that have caused financial institutions to require certifications in many cases that probably are outside of the statutory intent.

6. 314(b) Information Sharing

Section 314(b) of the USA PATRIOT Act permits financial institutions to share information that relates to anti-money laundering or anti-terrorism activities to and from other financial institutions. To be eligible to share pursuant to this law, the implementing regulation (31 C.F.R. §103.110) requires that each financial institution file a notice with FinCEN of its intent to avail itself of this right and such notice must be renewed annually. There are three improvements to this process that we recommend that would greatly reduce the administrative burden associated with this regulation. We believe that the law should encourage financial institutions to share valuable information and improve coordination on anti-money laundering and anti-terrorism financing efforts. The removal of artificial barriers to such sharing is therefore beneficial.

First, the requirement to file a notice to FinCEN annually should be eliminated. A single registration should be sufficient to put the federal government and other financial institutions on notice that an entity intends to share information and the appropriate contacts. A financial institution should update the pertinent information (such as the primary contact name and telephone number) when it changes. Otherwise, no benefit is served by the annual filings. While FinCEN distributes a list of registered financial institutions quarterly with expiration dates,

FinCEN's database has no efficient process to automatically notify financial institutions that the annual notice is expiring or to facilitate re-registration. A financial institution may inadvertently have their filings expire and jeopardize the 314(b) safe harbor purely because of an administrative error.

Second, FinCEN's current system for tracking and maintaining financial institutions eligible to share under Section 314(b) is not user-friendly for large financial institutions. The current procedures do not permit registration on behalf of a financial holding company and all of its subsidiaries or affiliates in a single filing. Instead, we must separately register each subsidiary financial institution and maintain such separate filings as the subsidiary structure changes (which in the case of large companies may be thousands of companies).

Third, the regulations implementing Section 314(b) should explicitly permit sharing of anti-money laundering and anti-terrorism financing information among affiliated entities without regard to any filing or registration procedure. This is important for several reasons. Regulators currently expect that a financial institution will coordinate with subsidiaries and affiliates as a single enterprise for purposes of AML compliance, monitoring and reporting. The regulations should therefore support that expectation. Additionally, the safe harbor of Section 314(b) is important to encourage enterprise-wide AML coordination without worrying about lawsuits and criticism from customers or third parties relating to unauthorized information sharing. In particular, Section 314(b) should be interpreted to authorize sharing among affiliates for AML purposes, notwithstanding any other law or regulation potentially applicable (such as privacy laws or the Fair Credit Reporting Act) which may otherwise serve to chill such coordination. Finally, not all subsidiaries or affiliates independently meet the definition of a "financial institution" as defined by the regulation and therefore may not be eligible to share under the safe harbor. This unnecessarily takes a narrow, entity-specific approach to the rule and should not serve to exclude subsidiaries of regulated financial institutions that are themselves also subject to such regulation and supervision by virtue of their parent affiliation.

B. Regulation W

Bank of America has a number of concerns about specific provisions of Regulation W relating to affiliate transactions. Bank of America supports the comments and recommendations made by The Clearing House Association to the Federal Reserve Board in a letter dated November 4, 2003, supplemented by a letter dated March 14, 2004. Rather than restate each of those comments here, we incorporate that letter by reference.

We thank you for your consideration of the foregoing.

Sincerely,

Timothy J. Mayopoulos
General Counsel
Bank of America Corporation